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EXAMINER
DONLON, RYAN D

ART UNIT	PAPER NUMBER
3695	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptocorrespondence@austin-rapp.com

	Application No.	Applicant(s)
	10/561,897	SHEFFIELD ET AL.
Office Action Summary	Examiner	Art Unit	
	RYAN D. DONLON	3695	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>15 February 2011</u>.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-10,12-26,29 and 30</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-10,12-26,29 and 30</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>2/15/11</u>.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

Claim Status

1.   Applicant's submission filed on 15 February 2011 has been entered. Claims 1-10,

12-26, 29 and 30 are pending and have been examined.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

3.   Claims 1-4, 6, 8-10 and 29 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Admon. US 2006/0287924 (hereinafter Admon) in view of Mendiola

et al 2004/0058694 A1 (hereinafter Mendiola).

4.   As per **claim 1:**

Admon discloses an auction system for facilitating bidder participation in an

auction for the purchase of a lot, comprising:

at least a first data processing device and a memory in communication with the

data processing device (see at least paragraph [0026]), the memory storing instructions

executable by the processor to: receive a plurality of messages from a plurality of

bidders for the lot, each message including a bid for the lot (see at least paragraph

[0032]);

determine whether each of the plurality of messages comprises an acceptable

bid (see paragraph 22 which requires a participation fee to be a bid);

charge each bidder for sending the bid acceptance message (see at least

paragraph [0022] wherein charging the bidder, "for sending the bid acceptance

message" is considered intended use since the method would be performed the same

way, regardless of what the charge is intended for);

determine a bidder associated with a lowest unique bid for the lot, wherein at a

close of the auction the lowest unique bid is a winning bid in the auction for the

purchase of the lot (see at least paragraph [0022] and [0027]), wherein at least one

acceptable bid is not a winning bid.

5.   Admon does not disclose for each acceptable bid, sending a bid acceptance

messages message to each of said bidders notifying the bidder of the status of the

bidder's bid by SMS;

6.   However Mendiola discloses sending a bid acceptance messages message to

each of said bidders notifying the bidder of the status of the bidder's bid by SMS (see at

least paragraph [0188]);

7.   It would have been obvious to one of ordinary skill in the art to include in the

system for auctioning a lot at the lowest unique bid of Admon, the system for sending

acceptance messages as taught by Mendiola because this would have provided

convenient communication of messages (see at least Mendiola paragraph [0022]).

Further because the claimed invention is merely a combination of old elements, and in

the combination, each element merely would have performed the same function as is

did separately, and one of ordinary skill in the art would have recognized that the results

of the combination were predictable..

8.   Therefore, it would have been obvious to one of ordinary skill in the art to

combine the teachings Admon and Mendiola to obtain the invention as specified in

claim 1.

9.   As per **claim 2:**

Mendiola discloses an auction system of claim1, wherein the plurality of

messages is received via SMS messaging (see at least paragraph [0181]-[0184]).

10.   As per **claim 3:**

Admon and Mendiola do not disclose an auction system of claim1, wherein the

instructions are further executable to charge each bidder by sending the bid acceptance

message by a reverse billed SMS message.

11.   However Official Notice is taken that it was well known in the art at the time of the

invention to reverse bill SMS messages. For example, it was well known for businesses

to send reverse billed SMS messages for paying for images, ring tones, vending

machines, or a variety of other products.

12.   It would have been obvious to one of ordinary skill in the art to include in the

system for auctioning of Admon and Mendiola (see the rejection of claim 1), the well

known system for reverse billing using SMS for paying for services because the claimed

invention would provide a convenient system for charging customers. Further the

claimed invention is merely a combination of old elements, and in the combination, each

element merely would have performed the same function as is did separately, and one

of ordinary skill in the art would have recognized that the results of the combination

were predictable.

13.   Therefore, it would have been obvious to one of ordinary skill in the art to

combine the teachings Admon, Mendiola and the well known system for reverse billing

SMS messages to obtain the invention as specified in claim 3.

14.   As per **claim 4:**

Admon discloses an auction system of claim 1, wherein the instructions are

further executable to limit each bidder up to a maximum number of bids per auction (see

at least paragraph [0024]).

15.   As per **claim 6:**

Mendiola discloses an auction system of claim 1, wherein instructions are further

executable to:

sending a notification message to a bidder when the status of the bidder's bid

changes (see at least paragraph [0181]).

16.   As per **claim 8:**

Admon teaches receiving contact information from bidders to clarify information,

however Admon does not disclose an auction system of claim 6, wherein the status of

the bidder's bid changes to not currently being a lowest unique bid and the notification

message notifies the bidder that the bidder's bid is no longer the lowest unique but is

currently unique.

17.   However Mendiola discloses sending a notification message when the status of

the bidder's bid changes and the bidder is alerted of the change (see at least paragraph

[0181]) Mendiola also discloses sending the price information with this message.

18.   Further Herzog discloses notifying a bidder that the bidder's offer was not unique

(see at least claim 6).

19.   It would have been obvious to one of ordinary skill in the art to alert the user of

their bidding status because this would have provided the bidder with a guide to making

a decision about their next bid, just as the current highest bid does from the Mendiola

reference.

20.   Therefore, it would have been obvious to one of ordinary skill in the art to

combine the teachings Admon, Herzog and Mendiola to obtain the invention as

specified in claims 8.

21.   As per **claim 9:**

Mendiola discloses an auction system of claim 1, wherein the received bidder

messages are passed at least partially over the internet before processing the bid or the

bid acceptance messages are passed at least partially over the internet before being

sent by SMS (see at least paragraphs [0178]-[0182]).

22.   As per **claim 10:**

Mendiola teaches the system of claim 1, wherein the communication with the

bidders is handled by software in real time (see at least paragraphs [0015] and [0148]).

23.   As per **claim 29**:

24.   Admon discloses the auctioning system as claimed in claim 1, wherein the

instructions are further executable to: determine that the auction of the lot has ended

(see paragraphs [0025] and [0026)]);

25.   Admon does not particularly disclose instructions to send a notification message

to the bidder whose bid is the lowest unique bid that the bidder has placed a winning

bid.

26.   However Admon does teach contacting the winning bidder (see paragraph

[0022]).

27.   It would have been obvious to one of ordinary skill in the art to automate the

practice of notifying the winning bidder of Admon because the claimed invention is

merely the automation of a well known manual process, and one of ordinary skill in the

art would have recognized that the results of such automation were predictable.

28.   Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Admon in view of Mendiola and further in view of Herzog et al., US 20040059663

(herein after Herzog).

29.   As per **claim 5:**

Admon teaches receiving contact information from bidders to clarify information,
but does not disclose an auction system of claim 1, wherein the bid acceptance
message notifies the bidder that either the bidder's bid is the current lowest unique bid,
the bidder's bid is not unique (see at least claim 5) or the bidder's bid is unique, but is
not currently the lowest unique bid (for the purposes of examination, this claim is
interpreted in the alternative).

30.   However Herzog discloses an auction system as claimed in claim 1, wherein the
bid acceptance message notifies the bidder that either the bidder's bid is the current
lowest unique bid, the bidder's bid is not unique (see at least claim 5) or the bidder's bid
is unique, but is not currently the lowest unique bid (for the purposes of examination,
this claim is interpreted in the alternative).

31.   It would have been obvious to one of ordinary skill in the art to include in the
practice of clarifying information to bidder of Admon, the practice of sending notifications
as taught by Herzog, because this would allow non-winning bidders to be informed, and
one of ordinary skill in the art would have recognized that the results of the combination
were predictable.

32.   Therefore, it would have been obvious to one of ordinary skill in the art to
combine the teachings Admon, Mendiola and Herzog to obtain the invention as
specified in claim 5.

33.   As per **claim 7:**

Admon teaches receiving contact information from bidders to clarify information, however Admon does not disclose an auction system of claim 6, wherein the status of the bidder's bid changes to not currently being a unique bid and the notification message notifies the bidder that the bidder's bid is no longer unique and the price of the bidder's bid

34.   However Mendiola discloses sending a notification message when the status of the bidder's bid changes and the bidder is alerted of the change (see at least paragraph [0181]) Mendiola also discloses sending the price information with this message.

35.   Further Herzog discloses notifying a bidder that the bidder's offer was not unique (see at least claim 6).

36.   It would have been obvious to one of ordinary skill in the art to substitute the current highest bid, with bidder's price in a unique price auction because this would have provided the bidder with a guide to making a decision about their next bid, just as the current highest bid does from the Mendiola reference.

37.   Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings Admon, Herzog and Mendiola to obtain the invention as specified in claims 7.

38.   Claims 12-13, 15-16, 18-26 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Admon in view of Mendiola and further in view of M2 Presswire "Link77: Link77 introduces reverse charge SMS billing service for ringtones and logos."

(Hereinafter Link77) published December 18, 2001.

As per **claim 26:**

Admon discloses an auctioning system for facilitating bidder participation in an auction for the purchase of a lot, comprising:

at least a first data processing device and a memory in communication with the data processing device, the memory storing instructions executable by the processor (see paragraphs [0021] and [0026] to:

receive a plurality of bid data item over a computer network to which the computer system is connected, each bid data item being derived from a bid message sent by a bidder (see at least paragraph [0032]);

determine whether the bid data item comprises an acceptable bid (reads on requiring bids to have include a participation fee);

determine whether each bid data item is the current lowest unique bid for the auction (see paragraph [0027]);

and send the acceptance message, and billing the bidder (see paragraph [0022]), wherein at least one acceptable bid is not a winning bid.

39.　　Admon does not, however Mendiola does disclose:

if it is determined that the bid data item is the current [leading] bid, then to generate a bid acceptance message indicating that the bid is the current [leading] bid, and if it is determined that the bid data item is not the current [leading] bid, then to

generate a bid acceptance message indicating that the bid is not the current [leading]

bid (see at least paragraph [0188]);

prior to a close of the auction, determine the leading bid (see paragraph [0181])

determine a destination telecommunications device phone number for the

acceptance message (see at least paragraph [0188]);

and send the acceptance message at least partially over the computer network,

for transmission to the bidder at the destination telecommunications device by [a SMS

message] (see paragraphs [0178]-[0182]).

40.   Admon and Mendiola do not disclose a reverse billed SMS message.

41.   However Link77 discloses reverse billing a user for a service (see at least Link77

abstract)

42.   It would have been obvious to one of ordinary skill in the art to include in the

practice of holding an auction of Admon, the practice of interacting with bidders using

SMS of Mendiola, because this would have encouraged greater amount bidding by

informing bidders of their standing in an auction via the mobility of SMS. Further, the

claimed invention is merely a combination of old elements, and in the combination, each

element merely would have performed the same function as it did separately, and one

of ordinary skill in the art would have recognized that the results of the combination

were predictable.

43.   It also would have been obvious to one of ordinary skill in the art to include in the

practice of holding an auction of Admon, the practice of reverse billing using SMS as

taught by Link77 because this would have added a convenient method of billing and

paid for the convenience of SMS messages. Further, the claimed invention is merely a

combination of old elements, and in the combination, each element merely would have

performed the same function as it did separately, and one of ordinary skill in the art

would have recognized that the results of the combination were predictable.

44.   Therefore, it would have been obvious to one of ordinary skill in the art to

combine the teachings of Admon, Mendiola and Link77 to obtain the invention as

specified in claim 26.

45.   As per **claim 12:**

Mendiola discloses an auction system of claim 26 wherein the instructions are

further executable to:

receive an auction identifier data item ("UIN") with one of the bid data items, the

auction identifier data item being derived from the same bid message sent by a bidder

as the bid data item;

and use the auction identifier data item to determine an auction corresponding to

the auction identifier data item (see at least paragraph [0185]-[0187]).

46.   As per **claim 13:**

Admon discloses an auction system of claim 26 and further comprising:

validate one of the bid data items to determine whether a corresponding bid is an

acceptable bid for the auction (see at least paragraph [0022]).

47.   As per **claim 15:**

Admon does not disclose an auction system of claim 26, wherein the instructions are further executable to:

check whether one of the bid data item is in the correct bid units;

and if not, then convert the one of the bid data item into the correct bid units.

48.   However Official Notice is taken that it was well known in the art at the time of the invention to convert currencies when receiving a bid. For example when receiving a bid in an international auction, it was well known to convert the currencies to a base currency (such as dollars), using a going exchange rate, in order to compare the bids for determining a winner.

49.   It would have been obvious to one of ordinary skill in the art to include in the system for auctioning of Admon, the well known system for converting currencies of bids because this would have allowed for international auctions .Further because the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

50.   Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Admon and Link77 for at least the reasons disclosed in claim 26, and the well known system for converting currencies to obtain the invention as specified in claim 15.

51.   As per **claim 16:**

Admon does not discloses an auction system of claim 26 wherein the instructions are further executable to generate a unique identifier for each bid data item received.

52.   However Official Notice is taken that generating a unique ID (such as a highly precise timestamp) for each received bid is old and well known in the art at the time of the invention. For example, many electronic auctions will timestamp each incoming bid to determine the winning bid in case of a tie, or for auditing purposes on stock exchanges.

53.   It would have been obvious to one of ordinary skill in the art to include in the system for receiving bids of Mendiola, Admon and Link77 (see rejection of claim 26 above), the well known system for generating a unique ID for each incoming bid because this would have allowed for proper auditing of the auction service. Further, because the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

54.   Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 for at least the reasons disclosed in claim 26, and the well known system for generating a unique ID for each incoming bid to obtain the invention as specified in claim 16.

55.   As per **claim 18:**

Admon discloses an auctioning system of claim 26, wherein the instruction

executable to determine whether one of the bid data item is the current lowest unique

bid for the auction comprises instructions executable to:

carry out a look up of a database of stored bid data items for the auction (see

paragraphs [0023] and [0027]);

determine whether the number of stored bids at a bid data item value is 1;

if the number of stored bids at the bid data item value is 1 then carry out a look

up of the database of stored bid data items for the auction to determine the current

lowest unique bid value;

and determine whether the bid data item value is less than the current lowest

unique bid value (see at least paragraph [0027]).

56.   Admon does not disclose wherein the number of stored bids at a bid data item

value is zero.

57.   It would have been obvious to It would have been an obvious and simple

substitution to one of ordinary skill in the art to substitute zeros for 1's in the system for

Auctioning of Admon, and one of ordinary skill in the art would have recognized that the

results of the substitution were predictable.

58.   As per **claim 19:**

Mendiola discloses an auction system of claim 26, further comprising instructions

executable to marshal the bid acceptance message, which comprise instructions

executable to:

select a message template for the acceptance message (see at least paragraph [0188]);

look up stored variable data items (user's phone number);

and populate the message template with the variable data items (see at least paragraph [0188]).

59.   As per **claim 20:**

Mendiola discloses an auctioning system of claim 26, wherein the instructions executable to send the acceptance message includes instructions executable to load a message object with message data (the message) and bidder data (bidder's phone number) (see at least paragraph [0188]).

60.   As per **claim 21:**

Mendiola discloses an auction system of claim20, wherein sending the acceptance message further includes placing the message object in a message queue table (see at least paragraph [0188] where the message queue table is silently disclosed. As the messages are taught to be sent, it must be that the messages are sent through the "store and forward" network of the SMSC, see also paragraph [0016]).

61.   As per **claim 22:**

Mendiola discloses an auction system of claim 21, wherein sending the

acceptance message further includes:

polling the message queue table to identify new messages;

passing new messages to an aggregator service for transmission as an SMS

message to the bidder (see at least paragraph [0188] where the message queue table

is silently disclosed. As the messages are taught to be sent (transmission), it must be

that the messages are sent through the "store and forward" (store new messages and

forward them on) network (aggregator) of the SMSC, see also paragraph [0016]).

62.   As per **claim 23 and 24:**

Mendiola does not disclose an auction system of claim 22, wherein the

instructions are further executable to receive a receipt ID from the aggregator for the

message passed to the aggregator and store the receipt ID when received and

determine whether the receipt ID has been received and update a status associated

with the sent message.

63.   However Official Notice is taken that is was well known in the art to receive a

delivery confirmation (sometimes known as a delivery report) (a receipt ID) from an

SMS server (aggregator) and store the ID when received and updating the delivered

status associated with the sent message. For example, when an SMS is delivered, a

mobile service provider may receive a delivery confirmation (receipt ID) from the mobile

phone for the SMS message. For billing and auditing purposes this information is stored

by the mobile phone service provider, because the fees associated with the SMS

message are only charged if the message is delivered. Further the service provider

continues to attempt to deliver the SMS message until the SMS message has been delivered and the delivery confirmation has been received (updating a status) or until the provider determines the message is undeliverable.

64.   It would have been obvious to one of ordinary skill in the art to include in the system for accepting bids for a live auction using SMS phone number of Mendiola, Herzog and Link77 (see rejection of claim 26 above), the well known system for receiving, storing and determining using delivery confirmations because the claimed invention is merely a combination of *old and well known* elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

65.   Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 to obtain the invention as specified in claim 23 and 24.

66.   As per **claim 25:**

67.   Admon in view of Mendiola renders obvious the auctioning system of claim 24, wherein the instructions are further executable to:

68.   Identify a group of lowest unique bids (see Admon paragraph [0027]); and

69.   determining the lowest of the group of lowest unique bids for which the bid acceptance message has been received (see Admon paragraph [0027]).

70.   As per **claim 30** (New):

71.   Admon discloses the auctioning system as claimed in claim 26, wherein the

instructions are further executable to: determine that the auction of the lot has ended

(see paragraphs [0025] and [0026)]);

72.   Admon does not particularly disclose instructions to send a notification message

to the bidder whose bid is the lowest unique bid that the bidder has placed a winning

bid.

73.   However Admon does teach contacting the winning bidder (see paragraph

[0022]).

74.   It would have been obvious to one of ordinary skill in the art to automate the

practice of notifying the winning bidder of Admon because the claimed invention is

merely the automation of a well known manual process, and one of ordinary skill in the

art would have recognized that the results of such automation were predictable.

75.   Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Admon

in view of Mendiola further in view of Link77 as applied to claim 26 above, and further in

view of Abeshouse et al., EP 1220126 A2 (hereinafter Abeshouse), published March 7,

2002.

76.   As per **claim 14:**

        Admon doest not but Mendiola discloses an auctioning system of claim 26

wherein the instructions are further executable to:

poll a message store to identify new messages (see at least paragraph [0185]-
[0188]);

77.   use a mobile phone telephone number data item to determine whether one of the
bids is associated with an auction and if it is then loading message data into a message
object (the response to the user) (see at least paragraph [0186]-[0188] wherein it is
shown the mobile phone telephone number data item is used by the SMSC server to
receive the SMS message, then using the UIN from the recipient the message is
associated with the auction); and pass the message object to an auction application
(see at least paragraph [0188] wherein the message object is passed to the auction
application's SMS sending system).

78.   Admon, Mendiola and Link77 do not disclose if the bid is not associated with a
live (live is silently disclosed since Mendiola discloses an auction duration (see at least
paragraph [0165])) session for the auction, then using an auction identifier data item to
determine whether the one of the bids is for an auction and if it is then loading message
data into a message object.

79.   Abeshouse discloses wherein a bid is not associated with a live session for the
auction, then using an auction identifier data item to determine whether the bid is for an
auction and if it is then loading message data into a message object (see at least claim
9, paragraphs [0013]-[0020] wherein it is disclosed if a bid is received after the close of
an auction, the system checks to see if the bid is for an auction which has closed
accepting the bid (loading message data into a message object)).

80.   It would have been obvious to one of ordinary skill in the art to include in the

system for accepting bids for a live auction using SMS phone number of Admon in view

of Mendiola and Link77 (see rejection of claim 26 above), the system for accepting bids

as taught by Abeshouse because this would have allowed for determining whether a

submitted bid should be accepted when it is sent from a participant processor prior to

closing time as perceived at the participant processor, but after the auction processor

perceived closing time (see at least paragraph [0019]). Further because the claimed

invention is merely a combination of old elements, and in the combination, each

element merely would have performed the same function as is did separately, and one

of ordinary skill in the art would have recognized that the results of the combination

were predictable.

81.   Therefore, it would have been obvious to one of ordinary skill in the art to

combine the teachings of Mendiola, Herzog and Link77 for at least the reasons

disclosed in claim 26, and to further include the teachings of Abeshouse to obtain the

invention as specified in claim 14.

82.   Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Admon

in view of Mendiola and further in view of Link77 as applied to claim 13 above, and

further in view of Hong Kong's Tender, published June 2000.

83.   As per **claim 17:**

        Admon does not however Mendiola discloses an auctioning system of claim 13,

wherein the instructions executable to validate the one of the bid data item include at

least one of the following:

instructions executable to determine whether an auction is active (see at least

paragraph [0165]);

and instructions executable to determining whether the one of the bid data item

falls within a range of acceptable bid values (see at least paragraph [0171]).

84.   Mendiola and Admon do not disclose instructions executable to determine

whether a bid corresponding to the one of the bid data items exceeds a maximum

number of bids for the bidder (see at least paragraph [0037] wherein a maximum

number of bids);

85.   Hong Kong Tender discloses determining whether the bid exceeds a maximum

number of bids for the bidder (see at least page 2 "participation rules");

86.   It would have been obvious to one of ordinary skill in the art to include in the

system for receiving bids of Admon in view of Mendiola and Link77 (see rejection of

claim 26 above), the system for determining whether the bid exceeds a maximum

number of bids for the bidder as taught by Hong Kong's Tender because the claimed

invention is merely a combination of old elements, and in the combination, each

element merely would have performed the same function as is did separately, and one

of ordinary skill in the art would have recognized that the results of the combination

were predictable.

87.   Therefore, it would have been obvious to one of ordinary skill in the art to

combine the teachings of Admon, Mendiola and Link77 for at least the reasons

disclosed in claim 26, and Hong Kong's Tender to obtain the invention as specified in

claim 17

Response to Arguments

88.   Applicant's arguments filed on 15 February 2011 have been fully considered but

they are not persuasive.

89.   With respect to Applicant's arguments alleging the Examiner ignored the element

"for sending the bid acceptance message" the Examiner respectfully disagrees. To

begin, the Examiner firmly stands behind the rejection as presented. However, to

address the arguments, the Applicant's arguments are similar to selling a pen with two

free concert tickets vs. selling two tickets with a free pen. The mere characterization of

the charge as being for a particular service is simply a characterization and the two

methods (the method claimed vs. the method of the prior art) would have been

performed identically as claimed regardless of the characterization.

90.   In one interpretation, the broadest reasonable interpretation of this claim read in

light of the specification, this element reads on merely the written description of a line

item on a bill. Such written material does not patentably distinguish the claims from the

prior art, as is noted by the MPEP §2112.01:

> Where the only difference between a prior art product and a claimed product is
> printed matter that is not functionally related to the product, the content of the
> printed matter will not distinguish the claimed product from the prior art. In re
> Ngai, **>367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004)< (Claim
> at issue was a kit requiring instructions and a buffer agent. The Federal Circuit
> held that the claim was anticipated by a prior art reference that taught a kit that
> included instructions and a buffer agent, even though the content of the
> instructions differed.). See also In re Gulack, 703 F.2d 1381, 1385-86, 217 USPQ
> 401, 404 (Fed. Cir. 1983)("Where the printed matter is not functionally related to
> the substrate, the printed matter will not distinguish the invention from the prior

art in terms of patentability..[T]he critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate.").

91.   In the narrowest interpretation of this claim element supported by the specification, this claim element is directed to "sending the bid acceptance message by a reverse billed SMS message." (see Specification page 2 lines 26-29). However one can clearly see this is an overly narrow interpretation of claim 1 because such an interpretation is embodied in dependant claim 3 and separately in claim 27, where this clearly these limitations are identified in the prior art. Link77, for example, clearly shows charging for sending a SMS message identically to the implementation supported by the specification (see Specification page 2 lines 26-29).

92.   As one can see Applicant's arguments boast unreasonably narrow interpretations of the claim element and ignore the guidance of MPEP §2112.01.

93.   With respect to Applicant's arguments alleging Admon does not teach memory storing instructions executable by the data processing device to charge each bidder, the Examiner respectfully disagrees. Paragraph [0022] teaches "Additionally, a bid is submitted with a method of payment to ensure receipt of payment of a participation fee before determining the bid winners." And paragraph [0026] teaches, "In some embodiments of the invention, the above actions are performed automatically by a software program on a computer."

94.   With respect to Applicant's arguments alleging the prior art does not teach "prior to a close of the auction, determine whether each bid data item is the current lowest

unique bid for the auction.", the Examiner respectfully disagrees. The claim is clearly

obvious over the prior art as described in the rejection to the claim above.

95.   With respect to Applicant's arguments alleging the prior art Mendiola does not

teach "current lowest unique bid" or "reverse billed SMS" the Examiner notes that

Mendiola is not relied upon for teaching these elements. Rather "lowest unique bid" is

taught by Admon, and Link77 teaches "reverse billed SMS" as cited in the rejections

above. The rejection has been clarified above.

96.   With respect to Applicant's arguments alleging Mendiola does not teach "for each

bid data item that comprises an acceptable bid, generate a bid acceptance message"

pointing to the first bid of Mendiola, the Examiner respectfully disagrees. To begin,

Applicant's open-ended claim language (i.e. "comprising") allows for bids to be received

out side of the "plurality of bid data items" such as the first bid which may or may not go

acknowledged. Additionally, Mendiola teaches after the first bid is acknowledged, "Once

the user has registered their first bid for a product, notifications concerning the user's

bid and further bids can be sent to and received from the user's GSM mobile phone

without the need for the user to have access to his computer...".

Conclusion

97.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to. whose telephone number is (571)270-3602. The

examiner can normally be reached on Monday through Friday 7:30am to 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Charles Kyle can be reached on (571) 272-6746. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. D. D./
Examiner, Art Unit 3695
March 29, 2011

/Narayanswamy Subramanian/
Primary Examiner, Art Unit 3695